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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

LEONARD GUMPORT, TRUSTEE OF THE BANKRUPTCY ESTATE OF TRANSCON LINES,
Petitioner,
v.
STERLING PRESS, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF *AMICUS CURIAE* LLOYD T. WHITAKER, TRUSTEE OF THE BANKRUPTCY ESTATE OF OLYMPIA HOLDING CORPORATION f/k/a P*I*E NATIONWIDE, INC., IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. What is the meaning of the words "limiting" and "affecting" in section 9 of the Negotiated Rates Act of 1993 ("Rates Act"), Pub. L. No. 103-180, 107 Stat. 2053 (uncodified), which provides that "Nothing in this Act (including any amendment made by this Act) shall be construed as limiting or otherwise affecting application of title 11, United States Code, relating to bankruptcy; title 28, United States Code, relating to the jurisdiction of the courts of the United States (including bankruptcy courts; or the Employee Retirement Income Security Act of 1974"?

2. Is a forfeiture that is conditioned on the shutdown of a for-compensation business a forfeiture that is conditioned on the "financial condition" of the business within the meaning of the anti-forfeiture provisions of the Bankruptcy Code, 11 U.S.C. §§ 363(1), 541(c)(1)(B)?

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INTEREST OF THE *AMICUS CURIAE*

Amicus curiae Lloyd T. Whitaker, trustee of the bankruptcy estate of Olympia Holding Corporation, formerly known as P*I*E Nationwide, Inc. ("P*I*E"), files this brief in support of petitioner Leonard L. Gumport, trustee of the bankruptcy estate of Transcon Lines ("Transcon"). All parties have consented to the filing of this brief pursuant to Supreme Court Rule 37.2(a). As required by that rule, the parties' consent letters are filed with the Clerk of the Court.

P*I*E was once one of the larger interstate motor freight carriers in the United States. P*I*E formerly had more than 17,000 employees and annual revenues in excess of $963,000,000. On October 16, 1990, P*I*E filed a petition for relief under Chapter 11 of the Bankruptcy Code. *Amicus* Lloyd T. Whitaker was appointed Chapter 11 trustee on December 26, 1990 and converted the case to a Chapter 7 liquidation on March 11, 1991.

As with most bankrupt motor carriers, the principal asset of the P*I*E bankruptcy estate consists of pending claims to recover unpaid freight charges that former customers owe P*I*E. P*I*E had undercharged many of its customers. Consequently, many had paid less than the applicable filed tariff rate. Unless the Trustee recovers these undercharges, the P*I*E estate will not be able to pay the claims of P*I*E's former employees and their pension funds, even though a portion of those claims are entitled to priority under § 507(a)(3)-(4) of the Bankruptcy Code, 11 U.S.C. § 507(a)(3)-(4).

As with Transcon, P*I*E was a signatory to collective bargaining agreements that required P*I*E to make pension contributions to multi-employer pension plans. Under ERISA as amended in 1980, P*I*E's shutdown triggered withdrawal liability of more than $100,000,000 to those plans. *See* Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208 (codified at 29 U.S.C. §§ 1381-1461). The P*I*E bankruptcy estate can not pay that withdrawal liability without collecting the undercharges thousands of P*I*E's former customers still owe the estate.

STATEMENT

In January 1995, prior to the Ninth Circuit's opinion in *In re Transcon Lines*, 58 F.3d 1432 (1995) ("*Transcon*"), and prior to the Seventh and Eighth Circuits' divergent interpretations of section 9 of the Rates Act,[1]

[1] *See* Transcon Petition at 27-28. The Negotiated Rates Act of 1993, Pub. L. No. 103-180, 107 Stat. 2044. Unless otherwise stated,

an impartial, expert commentator predicted the issues presented in Transcon's Petition would and indeed should reach this Court: [2]

> [T]he whole debate raises fundamental issues about the proper approach to statutory interpretation. While fascinating as an academic matter, the issue has too much practical impact for such uncertainty to continue. Perhaps billions of dollars are at stake. The Supreme Court has already taken several swings at the freight undercharge issue in the 1990s. The Court may well have another turn at the undercharge plate in the near future, as the NRA debate works its way through the courts.

Warren, Gorham & Lamont, *Bankruptcy Law Letter*, Vol. 15, No. 1, at 3 (Jan. 1995) ("*Law Letter*"). This commentator explained how the tension between sections 2 and 9 of the Rates Act raises these fundamental issues of statutory interpretation:

> The primary purpose of the NRA was to stop the collection of undercharge claims by defunct motor carriers. The difficult issue that has plagued the courts is how to square Sections 2 and 9 of the NRA. As noted above, Section 9 plainly subordinates the NRA to the Bankruptcy Code. Section 2, however, would radically alter the rights of bankruptcy trustees of carriers by making it much more difficult to collect undercharges.

Stating that section 9 resulted from "a fascinating behind-the-scenes tale of committee power struggles and

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all capitalized terms have the definitions specified in Transcon's Petition.

[2] The importance of the issues was also evident to the Ninth Circuit's Chief Judge. At the conclusion of oral argument in the Ninth Circuit and prior to filing its decision, Chief Judge Wallace stated: "Somehow I feel that this was a moot court this morning and that no matter who wins or loses that there's another court that you all have your eye on . . . ." Tape of oral argument of October 6, 1994 in Ninth Cir. No. 94-55425.

ambiguous compromises," this commentator further explained:

> In short, the Public Works Committee of the House assumed responsibility for the anti-undercharge legislation. The Judiciary Committee, however, asserted legislative jurisdiction, arguing that the bill implicated bankruptcy law and procedure and the division of adjudicatory responsibility between the courts and administrative agencies. To keep the Judiciary Committee from taking over the bill and holding hearings on it, the Public Works Committee added a new Section 9 to the NRA, which as enacted provides:
>
> > Nothing in [the NRA] . . . shall be construed as limiting or otherwise affecting application of title 11, U.S.C., relating to bankruptcy; title 28, U.S.C., relating to jurisdiction of the courts of the United States (including bankruptcy courts) . . . .

Law Letter, at 2; *see* Appendices A and B hereto.[3]

As stated, the Ninth Circuit filed its opinion in *Transcon* following publication of these comments, but nevertheless *Transcon* fails to address the fundamental issues of statutory construction this case presents. Instead, the Ninth Circuit declares in conclusory terms that section 9 of the Rates Act "is clear," but without ever explaining (a) why it is so clear that the words "limiting or otherwise affecting" in section 9 mean only "amending," or (b) how it justifies deciding, as it did, to limit the scope of the term "financial condition" in the Bankruptcy Code in order to avoid "potential conflicts" with section 2 of

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[3] *See also The Negotiated Rates Issue and Proposed Legislative Solutions thereto: Hearing before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation*, H.R. Doc. No. 103-18, 103d Cong., 1st Sess. 319-22 (1993) ("*Hearings*") (1992 demands for sequential referral to Judiciary Committee) and H.R. Rep. No. 359, 103d Cong., 1st Sess. 7, 13-17 (1993) (1993 correspondence regarding demands of Judiciary Committee for sequential referral).

the Rates Act despite section 9's express prohibition against "limiting" the Bankruptcy Code. *See* Transcon Petition, at 13a, 20a. As the Transcon Petition correctly notes at 27-28, neither the Seventh nor Eighth Circuits agrees with the Ninth Circuit's interpretation of section 9, and all three circuit courts misinterpret its meaning because all three disregard section 9's language and legislative history. Because millions, possibly billions, of dollars are at stake, as are the rights of thousands of employees to receive their unpaid wage and pension claims, and because the integrity of the legislative process and its committee rules are in jeopardy, this Court should grant Transcon's petition.

ARGUMENT

I. THIS CASE RAISES FUNDAMENTAL ISSUES OF STATUTORY INTERPRETATION

The proper interpretation of section 9 of the Rates Act raises "fundamental issues" about the proper approach to interpretation of statutes. *See Law Letter*, at 3. That fundamental issue involves giving effect to the legislative compromise two congressional committees, with concurrent jurisdiction over a pending bill, have struck to ensure its enactment.

As reflected by Rule X of the Rules of the House of Representatives, Congress allocates committees legislative jurisdiction of all bills affecting specific subject matter. *See* Transcon Petition, at 132a-134a. This rule ensures that the committee (and staff) with the requisite expertise has an opportunity to review a bill before it is enacted. As in the case of the Rates Act, a committee may refrain from demanding referral of a bill when another committee includes in the bill a guarantee that the bill will not limit or affect laws within the allocated legislative jurisdiction of the other committee. This path of compromise is one alternative rules-driven accommodation that must occur whenever a congressional committee sponsors a bill to alter the substantive law of an area outside its own juris-

diction. It must be prepared either to permit the other committee(s) with jurisdiction to hold hearings on that bill or, as in the case of the Rates Act, to amend the bill to avoid the substantive overlap with the other committee's jurisdiction. Failure of the sponsoring committee to navigate either course of accommodation prevents the congressional committee with the requisite expertise and staff from hearing and reviewing the proposed legislation. The legislative product of accommodation through amendment generates confusing, deceptive statutory language and conflicting, ambiguous legislative history when the compromise occurs at the eleventh hour in the legislative process and the resulting language and history are reviewed in isolation without giving effect to all the words of the statute. The legislation tends to be self-contradictory; specific provisions alter substantive law while others disclaim any intent to change that law.

This Court has warned lower courts about how to interpret legislative compromises. As this Court stated in *Board of Governors of the Federal Reserve System v. Dimension Financial Group*, 474 U.S. 361, 374 (1986):

> Invocation of the "plain purpose" of legislation at the expense of the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent.

In *Transcon*, the Ninth Circuit pays lip service to *Board of Governors*, but fails to heed its lesson in statutory construction, failing to give proper effect to the fruits of the "fascinating behind-the-scenes tale of committee power struggles and ambiguous compromises." *Law Letter*, at 2.

In this case, the Public Works Committee initially sought to use its legislative jurisdiction of title 49 (transportation) to adopt provisions that would have the substantive effect of limiting and affecting title 11 (bankruptcy) and title 28 (jurisdiction), matters entrusted to the Judiciary Committee. The Judiciary Committee pro-

tected its jurisdiction of those matters. It insisted on the addition of section 9 to the Rates Act for the express purpose of preventing the Rates Act from either "limiting" or "affecting" title 11 or 28. *See Law Letter*, at 2; Transcon Petition, at 5-10. By narrowly construing the Rates Act's section 9 and by using the Rates Act's section 2 as an excuse for narrowly interpreting the words "financial condtion" in title 11, the Ninth Circuit unravels the legislative compromise and defeats the purpose and defies the language of section 9 of the Rates Act.[4] *See* Transcon Petition, at 28.

Today, if the Ninth Circuit's decision stands, the Public Works Committee has successfully limited the jurisdiction of bankruptcy courts under title 28 and limited the anti-forfeiture provisions of title 11 while purporting to amend only title 49, despite adding express disclaimers of such limitations in section 9 of the Rates Act. Tomorrow, other congressional committees and special interests may target this Court and its jurisdiction for curtailment, circumventing the Judiciary Committee through similarly

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[4] Notwithstanding the express language of Rates Act's section 9, the Eighth Circuit concluded that section 9 merely prevents the Rates Act from impairing the jurisdiction of courts, delineated in title 28, not the substantive provisions of the Bankruptcy Code, which appear in title 11. *See In re Jones Truck Lines, Inc.*, 57 F.3d 642, 646 (8th Cir. 1995) (*"Jones"*).

The Eighth Circuit focused on statements made in the Congressional Record on November 15, 1993 by Mr. Brooks, Chair of the Judiciary Committee. *See* 139 Cong. Rec. H9603 (Nov. 15, 1993). However, as the typeface of those statements reflect, they were not actually spoken, but were appended after the fact. *See id.* By that time, Mr. Brooks had already received written assurances from the proponent of the Rates Act that: "we do not intend in this legislation to affects [*sic*] either the Bankruptcy Code or the jurisdiction of the bankruptcy courts." H.R. Rep. No. 359, 103rd Cong., 1st Sess., at 16 (1993). Mr. Brooks addressed only jurisdictional issues on the floor of the House because the text of proposed section 9 did not mention title 28 (but did mention title 11) when favorably reported earlier in the day by the Public Works Committee. *See* H.R. Rep. No. 359, *supra*, at 13.

deceptive legislation that disclaims any intent to limit or affect title 28 or other laws within the purview of that committee.

II. THE "ABSURDITY" AND "REPEAL-BY-IMPLICATION" ARGUMENTS HAVE NO MERIT

In *Matter of Lifschultz Fast Freight Corp.*, 63 F.3d 621 (7th Cir. 1995) (*"Lifschultz"*), the Seventh Circuit noted that lower courts have found that section 2 of the Rates Act repeals by implication any contrary provision of the Bankruptcy Code. 63 F.3d at 626-27. The repeal-by-implication argument is untenable in light of this Court's decision in *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978) (*"TVA"*). In *TVA*, Chief Justice Burger explained the role of courts in resolving conflicting federal legislation where a subsequent federal law conflicts with a prior enactment. In that case, the Endangered Species Act proscribed the completion of a dam, while a subsequently enacted appropriations bill authorized expenditure of funds to complete the dam. Noting that "repeals by complication are not favored," 437 U.S. at 189, the Court concluded that the subsequent appropriations bill did not repeal the prior Endangered Species Act and, accordingly, the dam could not be completed even though Congress had specifically appropriated funds for that purpose by subsequent statute.

In stressing that carriers subject to section 2 of the Rates Act are almost exclusively in bankruptcy, the Seventh Circuit in *Lifschultz* implied that it would be absurd if section 2 did not forfeit the undercharge claims of such carriers. The "absurdity" principle fails to support permitting section 2 to override the anti-forfeiture provisions of the Bankruptcy Code for three reasons. First, the factual basis of this argument is mistaken; many non-operating carriers are not in bankruptcy.[5] Second, under

[5] The Seventh Circuit justified section 2's forfeiture on the ground that: "The class of carriers and claims treated by the Act

the decisions of this Court, the mere fact that section 2 has an unexpected result does not justify rewriting either section 9 of the Rates Act or the anti-forfeiture provisions of the Bankruptcy Code. *See Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 284-85 (1980) (when a statute has "compelling" language that produces "incongruities," then "the federal courts may not avoid them by rewriting or ignoring that language"). Third, the express terms of 11 U.S.C. §§ 363(*l*) and 541(c)(1)(B) contemplate they can and will invalidate an otherwise "applicable law" (§ 363(*l*)) or "applicable nonbankruptcy law" (§ 541(c)(1)(B)) seeking to modify the property rights of a debtor based on its financial condition. The claim of "absurdity" is really an attack on the anti-forfeiture policies Congress mandated in §§ 363(*l*) and 541(c)(1)(B). In enacting those provisions, however, Congress plainly understood that ill-advised legislators would occasionally enact laws that forfeited assets of debtors based on their financial condition. Armed with that knowledge and understanding, Congress decided that these subsequently enacted laws should be unenforceable, unless they duly amended title 11, which the Rates Act explicitly does not do.

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is almost entirely comprised of bankrupt carriers." *Lifschultz*, 63 F.3d at 625. In contrast, the Ninth Circuit in *Transcon* justified section 2's forfeiture of the undercharges of non-operating carriers on the ground that "many" shutdown carriers have remained "solvent and financially healthy" by suing their former customers. Transcon Petition, at 19a-20a.

Neither analysis is correct. The legislative record does not reflect *any* "solvent" or "financially healthy" shutdown carrier is suing its former customers (which would seem a counterproductive business tactic for a solvent and financially healthy carrier). *See Hearings*, 296-305. Similarly, the legislative record also reflects that of 140 known shutdown carriers, only 70 have filed bankruptcy. *Id.* The Eighth Circuit adds to the confusion by insisting that section 9 of the Rates Act, which expressly refers to title 11 and title 28, only addresses jurisdictional issues, exclusively a title 28 matter. *See Jones*, 57 F.3d at 646.

The argument that Transcon's position nullifies the Rates Act is overblown. The anti-forfeiture provisions of the Bankruptcy Code merely prevent section 2 of the Rates Act from forfeiting the undercharges of non-operating carriers that are debtors in bankruptcy cases. Under Transcon's position, each provision of the Rates Act still serves a vital purpose: (1) section 2 of the Rates Act will forfeit the undercharge claims of those non-operating carriers that did not or do not file bankruptcy (including A-Line),[6] and bankruptcy courts will remain free, under 11 U.S.C. §§ 305(a), 1112(b), to dismiss the bankruptcy cases of those non-operating carriers engaging in abusive collection practices or failing to make substantial distributions to their creditors; and (2) the remaining provisions of the Rates Act, §§ 3-9, all have full operative effect since none is conditioned on the non-operating financial condition of the carrier.

III. THE ANTI-FORFEITURE AND FILED RATE ISSUES THE PETITION PRESENTS ARE BOTH IMPORTANT

A. Forfeiture Clauses Are in Widespread Use

Because the effect of section 2 of the Rates Act is by no means unique, the Ninth Circuit's opinion has implications far beyond the estates of bankrupt motor carriers. Government agencies, insurers, joint venturers, franchisors, and lenders make widespread use of forfeiture provisions (without employing the Bankruptcy Code's trigger phrase, "financial condition") to rid themselves of entanglements with any entity suffering a business reversal or shutdown, even though its assets are most needed at that time to compensate employees and other creditors. *See, e.g., In re Gull Air, Inc.*, 890 F.2d 1255 (1st Cir. 1989) (gov-

[6] The legislative record reflects that of the 140 carriers that have shut down since 1980, approximately 70 of these carriers have not filed bankruptcy. *See Hearings*, 297-304; *see also supra*, note 5. Section 2 applies to this 50 percent.

ernment regulation that forfeit airline's landing slot based on non-use); *In re Transcon Lines (Gumport v. ICC)*, 147 B.R. 770, 775 (Bankr. C.D. Cal. 1992) (regulations of ICC that attempted to prevent non-operating carriers from collecting undercharges);[7] *Matter of Daugherty Construction, Inc.*, 188 B.R. 607, 609 (Bankr. D. Neb. 1995) (example of standard form partnership agreement providing for dissolution of partnership upon bankruptcy or dissolution of any partner); King, *Collier Lending Institutions and the Bankruptcy Code* ¶ 2.51, at 2-177 (1993) (example of standard form loan agreement specifying as an event of default the "Debtor ceas[ing] to conduct its business as the same is now conducted in the ordinary course of its business"); *see also In re Government Securities Corp.*, 972 F.2d 328, 329 (11th Cir. 1992) (forfeiture of benefits of fidelity bond if company is taken over by a liquidator), *cert. denied* 507 U.S. ——, 122 L.Ed.2d 744 (1993).

Accordingly, in light of the widespread use of such forfeiture provisions, the extent to which these provisions may be enforced in bankruptcy cases, notwithstanding 11 U.S.C. §§ 363(*l*) and 541(c)(1)(B), will have great significance beyond the trucking business.[8]

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[7] *See also In re Transcon Lines (Gumport v. ICC)*, 178 B.R. 228 (Bankr. C.D. Cal. 1995) (awarding attorneys fees against the ICC for its unjustified conduct in promulgating regulations to prevent non-operating carriers from collecting undercharges). The district court affirmed this decision in an unpublished opinion, and the ICC recently filed an appeal from the judgment of the district court.

[8] Uncontroverted and undisputed expert testimony in Transcon's case showed that the Rates Act forfeited Transcon's assets based on its "financial condition." S. Chelliah, an accountant certified in the United States and chartered in the United Kingdom, submitted a declaration that, "when used to describe a motor carrier of property, the words 'no longer transporting property' refer to and describe the financial condition of the motor carrier, and . . . such financial condition would have to be disclosed in an audited financial statement of the motor carrier of property in order for the finan-

B. Congress Has Declined To Repeal the Filed Rate Doctrine

Despite the extensive criticism and controversy that surrounds the filed rate doctrine, Congress has repeatedly declined to repeal it. Indeed, except for section 2(a) of the Rates Act targeting shutdown carriers, the Rates Act, in sections 2(e)(4), 4(b), and 7, reaffirms the filed rate doctrine and directs the ICC to adopt regulations implementing it. In 1995, in the "Trucking Industry Regulatory Reform Act," Pub. L. No. 103-311, 108 Stat. 1683, Congress modifies the filed rate doctrine, but directs that the tariffs that collective rate-making bureaus file with the ICC continue to have effect. Finally, on December 30, 1995, President Clinton signed into law the "ICC Termination Act of 1995," Pub. L. No. 104-88, abolishing the ICC, but, significantly, not abolishing the filed rate doctrine even though Congress could readily have done so if a consensus had existed for accomplishing that result.

IV. EACH OF THE CONFLICTING CIRCUIT COURT INTERPRETATIONS OF RATES ACT SECTION 9 IS UNTENABLE

A. *Seventh Circuit:*

Stating that section 9 of the Rates Act is ambiguous, the Seventh Circuit ruled it would enforce the specific provisions of the Rates Act's section 2, even if enforcement would affect bankruptcy cases under title 11, except when there was a "direct" conflict with the provisions of the Bankruptcy Code. *See Lifschulz*, 63 F.3d at 625. The Seventh Circuit overlooked the direct conflict between the forfeiture provisions of section 2 of the Rates Act and the Bankruptcy Code: (1) section 2 of the Rates Act

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cial statement to conform with generally accepted accounting principles for the presentation of financial information." *See* Appellant's Excerpts of Record, Vol. 3, pp. 542-43, filed May 20, 1994 in Ninth Cir. No. 94-55425.

forfeits between 80 and 100 percent of the undercharges of a motor freight carrier that shuts down its business, while (2) sections 363(b) and (*l*) of the Bankruptcy Code permit use of a bankrupt carrier's property outside the ordinary course of business and regardless of any applicable law that purports to forfeit property of the debtor based on its financial condition.

B. *Eighth Circuit*:

The Eighth Circuit ruled section 9 of the Rates Act was merely "a response to concerns that portions of the [Rates Act] would transfer jurisdiction over bankrupt carriers to the ICC." *Jones*, 57 F.3d at 646. This conclusion conflicts with the language and legislative history of section 9 of the Rates Act. Its language expressly prohibits section 2 of the Rates Act from "limiting or otherwise affecting" either title 11 or title 28; the statutory provisions on bankruptcy jurisdiction appear only in title 28. *See* 28 U.S.C. §§ 157 and 1334. As a part of the legislative compromise, the Public Works Committee deliberately agreed with the Judiciary Committee that the Rates Act would amend neither title 11 nor title 28, not just title 28. *See*, Appendices A and B hereto. The Eighth Circuit arrived at the opposite conclusion, focusing only on comments of legislators to include title 28 in section 9 of the Rates Act at a time in the legislative process when section 9 of the Rates Act already clearly excluded title 11. See *supra*, note 4.

C. *Ninth Circuit*:

Contradicting the Seventh Circuit's conclusion that section 9 of the Rates Act is "susceptible to two interpretations," *Lifschultz*, 63 F.3d at 625, the Ninth Circuit in *Transcon* ruled the words "limiting" and "affecting" are merely synonmys for the word "amending." *Transcon*, 58 F.3d at 1438. The Ninth Circuit then used section 2 of the Rates Act as a basis for arriving at a narrow

definition of the words "financial condition" in 11 U.S.C. §§ 363(*l*) and 541(c)(1)(B). *Transcon*, 58 F.3d at 1440. The Ninth Circuit thereby violated the explicit command of section 9 of the Rates Act that the Act shall not be construed as "limiting or otherwise affecting" title 11.

V. RATES ACT SECTION 9 RESULTED FROM CONCERNS AT LEAST AS COMPELLING AS THOSE THAT LED TO RATES ACT SECTION 2

Advocates of forfeiting undercharges invariably criticize the filed rate doctrine and the litigation it has spawned. However, if the filed rate doctrine was so clearly without purpose, Congress could have altered section 2 of the Rates Act to specify a 100-percent forfeiture of all undercharges and further to specify that section 2 is not subject to the limitations of section 9 of the Rates Act. Congress did not do so, despite vitriolic attacks on the filed rate doctrine, because of the effective, compelling opposition from the Judiciary Committee, bankruptcy trustees, pension funds, and labor organizations. *See* Appendices A and B hereto; *see also Hearings*, at 148-63, 169-74.

For example, during the 1993 hearings on the proposed Rates Act, representatives of Transcon and the Central States pension funds testified as quoted in Transcon's Petition at 7-8. In addition, a labor representative testified during those hearings to the continuing need of former trucking employees for strict enforcement of the filed rate doctrine:

> Thousands of employees, including members of my local, did not receive wages, severance, vacation pay and other monies owed to them when their carrier employers went bankrupt. Contributions were not made to their pension and health and welfare plans. The aggregate debts owed to employees and their pension, health and benefit plans are enormous, probably in the hundreds of millions of dollars.

Hearings, at 149 (testimony of R. Ken Hall). Faced with this testimony, the proponents of the Rates Act had good reason to accede to the Judiciary Committee's demand that section 9 be added to the Rates Act. *See* Appendices A and B hereto; *see also* Transcon Petition, at 7-8.

CONCLUSION

For the foregoing reasons, and in addition to the reasons stated in Transcon's Petition, this Court should issue a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

TEXT OF NOVEMBER 10, 1993 LETTER FROM THE CHAIR OF THE JUDICIARY COMMITTEE TO THE CHAIR OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

November 10, 1993

The Honorable Norman Mineta
Chairman
Committee on Public Works and Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Yesterday, the Committee on Public Works and Transportation approved H.R. 2121, the Negotiated Rates Act of 1993.

Among other things, the legislation specifies procedures for the resolution of undercharge claims in pending and future bankruptcy case. Under the legislation, disputes and issues currently within the jurisdiction of the Federal courts (and the bankruptcy courts) would be subject to resolution by the Interstate Commerce Commission instead. This contravenes and directly intersects with bankruptcy law, which mandates that the courts supervise and manage a debtor's affairs and the disposition of claims after a debtor has entered bankruptcy. A related bill, S. 412, has been approved by the Senate and is pending before the Committee on Public Works and Transportation.

As you are aware, under Rule X of the Rules of the House of Representatives, the legislation, as currently drafted, implicates two separate areas of subject matter clearly within the jurisdiction of the Committee on the Judiciary; bankruptcy law and procedure and the proper division of adjudicatory responsibility between courts and administrative agencies.

The Committee on the Judiciary has had no opportunity whatsoever to review the legislation and consider

its impact on the bankruptcy system, administrative law and the jurisdiction of the Federal courts. Such an opportunity is essential if the Committee is to carry out its mandate to ensure the integrity and consistency of the Code in these areas of the law.

For these reasons, absent an amendment to strike or modify the implicated provisions and accompanying legislative history, I would feel compelled to seek a sequential referral of H.R. 2121 and any similar legislation. In addition, should these or similar provisions be included in legislation scheduled for conference, I would request that Members of the Committee on the Judiciary be named as conferees for the consideration of such provisions.

Norm, I know and appreciate your understandable desire to move the legislation to the Floor for consideration before the close of the first session. I would therefore hope that we can work together cooperatively as we have done so often in the past—in order to bypass the need for a formal request by my Committee for a sequential referral of H.R. 2121.

Meanwhile, with best wishes, I am

Sincerely,

/s/ Jack Brooks
JACK BROOKS
Chairman

cc: The Honorable Nick Rahall
Chairman
Subcommittee on Surface Transportation
Committee on Public Works and Transportation
The Speaker
H-204 Capitol
Washington, D.C. 20515-6501

APPENDIX B

TEXT OF NOVEMBER 15, 1993 LETTER FROM THE CHAIR OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO THE CHAIR OF THE JUDICIARY COMMITTEE

November 15, 1993

Hon. JACK BROOKS
Chairman, Committee on the Judiciary
Rayburn House Office Building, Washington. DC.

DEAR MR. CHAIRMAN: Thank you for your letter on H.R. 2121, the Negotiated Rates Act of 1993.

Because of your Committee's jurisdiction over Federal courts and bankruptcy, I recognize your right to request a sequential referral of H.R. 2121. However, and in accordance with your letter, I am pleased that we were able to agree on language clarifying that we do not intend in this legislation to affects [sic] either the Bankruptcy Code or the jurisdiction of the bankruptcy courts. Based on our agreement, it is my understanding that you will not pursue your request for a sequential referral.

I further recognize that in pursuing referral, your action will in no way be construed as a waiver of any jurisdiction your Committee has related to this issue. I will gladly include our exchange of correspondence on this matter in the Record during House consideration of H.R. 2121 and in any report by the Committee on Public Works and Transportation on H.R. 2121.

Sincerely yours,

NORMAN MINETA,
Chair, Committee on Public Works and Transportation.